POLICY NOTE

THE FOOD, NATURAL MINERAL WATER, SPRING WATER AND BOTTLED DRINKING WATER (EU EXIT) (SCOTLAND) (AMENDMENT) AMENDMENT REGULATIONS 2021

SSI 2021/109

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 (the "2018 Act"). The instrument is subject to the negative procedure.

Purpose of the instrument.
The purpose of this instrument is to amend the commencement date of Regulation 3 and 4 of the Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Regulations 2021 which relates to domestic food labelling provisions. This amendment is required to align with the coming into force date of retained EU law which has changed from 15 April 2021 to 27 May 2021 to ensure these provisions continue to operate effectively now that the UK has withdrawn from the EU.

Policy Objectives

Where practical and appropriate, European Union legislation is being retained in relevant domestic law applicable within the UK on the UK's exit from the EU. In the fields of food and feed safety and hygiene and composition, labelling and standards, Food Standards Scotland, in line with the Scottish Government and other devolved administrations, plan to retain the current standards set out in EU legislation and EU-derived domestic legislation. This will ensure the continued regulation of food and feed safety and hygiene, and composition, labelling and standards within Scotland now that the UK has withdrawn from the EU. This will also protect human health, maintain consumer protection and provide continuity as far as possible for businesses and consumers. This instrument concerns the relevant fixes to the EU-derived domestic legislation and makes the associated amendment necessary to the commencement date of the of domestic food labelling legislation to address matters arising from the withdrawal of the UK from the European Union.

Explanation of the law being amended by the regulation

This instrument makes amendments to the following SSI:

- The Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Regulations 2021

Reasons for and effect of the proposed change or changes on retained EU law

The amendments do not make any changes to retained EU law, but only amend the commencement date of provisions within domestic law to align with anticipated changes being made to the coming into force date of retained EU law in a UK statutory instrument. This is to ensure continuity in Scots law now the UK has withdrawn from the EU. Without this minor technical amendment the current legislation will not operate.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Minister for Public Health and Sport, Mairi Gougeon has made the following statement "In my view the Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Amendment Regulations 2021 does no more than is appropriate. This is the case because the instrument only amends the commencement date of the provisions within domestic law concerning food labelling and country of origin legislation to address matters arising from the withdrawal of the UK from the European Union."

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Minister for Public Health and Sport, Mairi Gougeon has made the following statement "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is the case because the instrument makes minor and technical amendments to Scottish secondary legislation to ensure the law is clear and remains operable now that the UK has withdrawn from the EU."

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Minister for Public Health and Sport, Mairi Gougeon has made the following statement "In my view the Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Amendment Regulations 2021 does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Minister for Public Health and Sport, Mairi Gougeon has made the following statement "In my view Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Minister for Public Health and Sport, Mairi Gougeon has made the following statement "In my view Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union."

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

The Minister for Public Health and Sport, Mairi Gougeon has made the following statement "In my view the Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Amendment Regulations 2021 have no effect on the rights and duties relating to employment, health and safety and matters relating to consumer protection. This is because the minor and technical amendments do not make any policy changes and ensure the current high level of public health and consumer protection, with regard to food law, is maintained now that the UK has withdrawn from the EU."

An indication of how the regulations should be categorised in relation to the significance of the change proposed

Low – this instrument is concerned with only minor and technical amendment to provide continuity of law with no significant policy change and is made under the negative procedure.

Statement setting out the Scottish Ministers' reasons for their choice of procedure

The Minister for Public Health and Sport, Mairi Gougeon has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018. "In my view it is appropriate that the Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Amendment Regulations 2021 are subject to the negative procedure as the instrument contains only minor and technical amendments to Scottish secondary legislation and do not fall within scope of the European Union (Withdrawal) Act 2018 Schedule 7 Part 1 paragraph 1 (2) (a) to (d) which requires the affirmative procedure."

Further information

Consultation

To comply with the requirements of Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council a two week consultation was carried out in Scotland on the policy underpinning these regulations from 26th July and 9th August 2019.

The feedback received raised no concerns and was generally in favour of the proposals regarding periods of adjustment for businesses placing food on the market in Scotland. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Food Standards Scotland Citizen Space website.

Impact Assessments

Full impact assessments have not been prepared because the purpose of this instrument is to amend the commencement date of Regulation 3 and 4 from 15 April to 27 May 2021 in order to maintain the operability of existing regimes as a consequence of EU exit. As only a minor technical amendment is being made, the impact of this policy is considered to be minimal. The costs identified in the consultation and responses arise from the UK leaving the EU and not from this instrument which mitigates those costs as far as possible.
The amendments do not alter Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

Financial Effects

The Minister for Public Health and Sport, Mairi Gougeon confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Food Standards Scotland

February 2021